



of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice.

Claimant admits he did not give notice of a work related accident to anyone else within 10 days, and he is not now alleging that there was just cause for his failure to give notice within 10 days so as to extend the time for giving notice to 75 days after the date of accident. Likewise, claimant does not allege actual knowledge of accident by the employer or that the employer was unavailable to receive notice or that the employee was unable to give notice. Accordingly, if the notice given to Mr. Lamar on the Wednesday following claimant's alleged date of accident is found to be inadequate, claimant's claim would be time barred by K.S.A. 44-520.

Claimant does not allege that Mr. Lamar is a management level employee of respondent or that Mr. Lamar is a designated agent of respondent for the purpose of receiving notice of accidents. Like claimant, Mr. Lamar worked for respondent as a service tech. Nevertheless, claimant contends that Mr. Lamar was his supervisor because, unlike claimant, Mr. Lamar was a journeyman with the union. Claimant was listed as an apprentice with the union. On occasion Mr. Lamar supervised claimant's work. But under the city licensing criteria claimant is listed as a journeyman. When claimant worked by himself he was classified as a journeyman. On August 24, 2000, claimant was working by himself as a journeyman.

Claimant was asked what the purpose was in telling Mr. Lamar about his injury.

THE COURT: Before. So you told Lamar that you injured it at work. What was the purpose of telling him?

THE CLAIMANT: We were kind of friends. We'd go out occasionally on Fridays and shoot some pool.

THE COURT: You didn't expect him to run it up the chain?

THE CLAIMANT: No.

THE COURT: You weren't seeking anything from him as an employer to get medical treatment or anything else?

THE CLAIMANT: No.

THE COURT: So you were just talking as a friend?

THE CLAIMANT: Yes.<sup>1</sup>

Claimant did not ask to fill out an accident report, nor did he ask for medical treatment.

Claimant was not the only witness to testify at the preliminary hearing. His testimony that he gave notice within ten days of his accident to Mr. Lamar was contradicted by Mr. Lamar himself who testified that claimant told him about having problems with his knee, but never mentioned that he had an accident on August 24 or that he injured his knee at work. Mr. Lamar also testified that he did not consider himself to be claimant's supervisor and if claimant had reported a work injury to him, he would have told claimant to report it to a supervisor. Claimant's supervisor at that time was Joe Piacenza. Furthermore, claimant never says he was instructed that Mr. Lamar was the appropriate person to whom accidents were to be reported or that his actions were consistent with the established policies and procedures of respondent. Claimant's testimony is further contradicted by his admission that he told his supervisor, Mr. Piacenza, that he injured his knee at home. Claimant was asked why he told Mr. Piacenza this:

Q. You mentioned that you told Joe you hurt your knee at home. Why did you choose to tell him it happened at home initially?

A. Basically 'cause I've been here before and the thought of being off work for six months or better and losing everything again was not something I wanted. We just bought a house and I had two car payments and it was something I wanted to get resolved quickly.

Q. Did you tell him that then to save your job?

A. Well, that was partially why I told him that. Accidents aren't good on the record.<sup>2</sup>

Claimant's explanation for telling Mr. Piacenza this is not believable, particularly since he alleges he had already given notice to Mr. Lamar that his injury was work related. Furthermore, claimant acknowledges he has had prior workers compensation claims and, therefore, was aware of how important it is to immediately report accidents.

The Appeals Board finds that claimant did not give Mr. Lamar notice on Wednesday, August 30, 2000, of a work related accident. Accordingly, the Appeals Board need not determine whether Mr. Lamar was claimant's supervisor or was otherwise an agent of the

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<sup>1</sup> April 23, 2001 Tr. of Prel. H. at 22.

<sup>2</sup> April 23, 2001 Tr. of Prel. H. at 10.

respondent for the purpose of receiving notice of accident. As claimant failed to give timely notice, the Order of the Administrative Law Judge should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish on April 23, 2001, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2001.

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BOARD MEMBER

c: Sean C. Brennan, Wichita, KS  
D. Steven Marsh, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director